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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

TED VANCLEAVE, Plaintiff, v. CAPITAL JET, INC., Defendant.	Case No. ____________________ **COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF FROM COPYRIGHT INFRINGEMENT** **DEMAND FOR JURY TRIAL**

Plaintiff Ted VanCleave, for his Complaint against Capital Jet, Inc., Defendant, alleges as follows:

INTRODUCTION

1. Ted VanCleave (hereinafter "Plaintiff"), by counsel, brings this action to challenge the actions of Capital Jet, Inc. (hereinafter "Defendant"), with regard to the unlawful use of a copyrighted image (hereinafter "Image") owned by Plaintiff, and this conduct caused Plaintiff damages.

2. For the purposes of this Complaint for Damages, unless otherwise

indicated, “Defendant” includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogates, representatives and insurers of Defendant(s) named in this caption.

JURISDICTION AND VENUE

3. This is a civil action seeking damages and injunction relief for copyright infringement under the Copyright Act of the United States, 17 U.S.C. § 101, whereby the defendant violated plaintiff’s exclusive rights as copyright owner pursuant to 17 U.S.C. §§ 106 and 106A.

4. This Court has subject matter jurisdiction over Plaintiff’s claims for copyright infringement pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a).

5. This Court has personal jurisdiction over Defendant because Defendant’s principal place of business is in the State of Texas, Defendant is a business incorporated in the State of Texas, Defendant’s acts of infringement complained of herein occurred in the State of Texas, and Defendant has caused injury to Plaintiff in his intellectual property within the State of Texas.

6. Venue is proper pursuant to 28 U.S.C. § 1391(b) because the Defendant resides in this judicial district and a substantial part of the events giving rise to Plaintiff’s claim occurred in this judicial district. Alternatively, venue is also proper pursuant to 28 U.S.C. § 1400(b) because the Defendant resides, committed the acts of infringement, and has a regular and established place of

business in this judicial district.

PARTIES

7. Plaintiff is a natural person who resides in the City of North Bay Village, in the State of Florida, and is a professional photographer by trade.

8. Plaintiff is a "copyright owner" who holds "exclusive rights" to his "copyrighted work[s]" pursuant to 17 U.S.C. §§ 101, 106, 106A.

9. Plaintiff is informed and believes, and thereon alleges, that Defendant is a business entity operating from the City of Houston, in the State of Texas, and conducted business within the City of Houston, in the State of Texas.

10. Plaintiff is informed and believes, and thereon alleges, that Defendant is a business entity that unlawfully published Plaintiff's copyrighted works without Plaintiff's express or implied authority, by the method of a license.

FACTUAL ALLEGATIONS

11. At all times relevant, Plaintiff was an individual residing within the State of Florida.

12. Plaintiff is informed and believes, and thereon alleges, that at all times relevant, Defendant was a business entity conducting business in the State of Texas and in this judicial district.

13. Plaintiff is a well-known photographer. He photographs various objects and sells or licenses them to people and companies seeking to make use of

the photographs for advertisements and pecuniary gain. Plaintiff's livelihood is dependent on receiving compensation for the photographs he produces.

14. Plaintiff took the original Image; *see* Original Image attached hereto as Exhibit 1.

15. Plaintiff has ownership and copyrights to the Image.

16. Plaintiff has registered the Image with the United States Copyright Office under registration number VA 1-783-062.

17. Plaintiff did not consent to authorize, permit, allow in any manner the use of the Image by Defendant.

18. Plaintiff is informed and believes that Defendant willfully used Plaintiff's copyrighted works without his permission and that it published, communicated, benefited through, posted, publicized and otherwise held out to the public for commercial benefit, the original and unique work of Plaintiff without Plaintiff's consent or authority, and acquired monetary gain and market benefit as a result.

19. Plaintiff is informed and believes that Defendant willfully used the Image on its business website from February 25, 2013 to on or around December 4, 2014; *see* Screenshots of Defendant's use attached hereto as Exhibit 2.

20. Defendant willfully used the Image to promote the Defendant's business despite its knowledge that the Images are subject to copyright.

21. Plaintiff did not consent to the use of his Image for commercial gain.

FIRST CAUSE OF ACTION

COPYRIGHT INFRINGEMENT

Title 17 of the United States Code

22. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

23. Plaintiff did not consent to, authorize, permit, or allow in any manner the said use of Plaintiff's unique and original materials and/or work.

24. Plaintiff is informed and believes and thereon alleges that said Defendant willfully infringed upon Plaintiff's copyrighted works in violation of Title 17 of the U.S. Code, in that it published, communicated, benefited through, posted, publicized, and otherwise held out to the public for commercial benefit, the original and unique work of the Plaintiff's consent or authority and acquired monetary gain and market benefit as a result.

25. As a result of each and every Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled to actual damages and profits pursuant to 17 U.S.C. §504(b), or statutory damages in an amount up to $150,000.00 for each infringement pursuant to 17 U.S.C. § 504(c).

26. As a result of the Defendant's violations of Title 17 of the U.S. code, the court in its discretion may allow the recovery of full costs as well as

reasonable attorney's fees and costs pursuant to 17 U.S.C § 505 from Defendant.

27. Plaintiff is also entitled to injunctive relief to prevent or restrain infringement of his copyright pursuant to 17 U.S.C. § 502.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant

- Awarding statutory damages in an amount up to $150,000.00 for each infringement pursuant to 17 U.S.C. § 504(c) from Defendant;
- Awarding costs of litigation and reasonable attorney's fees, pursuant to 17 U.S.C. § 505 from Defendant;
- Enjoining the Defendant from further infringement of all copyrighted works of the Plaintiff pursuant to 17 U.S.C. § 502; and
- Awarding any other relief the Court deems just and proper.

Dated: May 18, 2016

Respectfully submitted,

/s/ Mathew K. Higbee, Esq.
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Counsel for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff Ted VanCleave, hereby demands a trial by jury in the above matter.

Dated: May 18, 2016

Respectfully submitted,

/s/ Mathew K. Higbee, Esq.
Mathew K. Higbee, Esq.
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